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# TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 226.

FRANK M. FAIRBANK, PLAINTIFF IN ERROR,

*vs.*

THE UNITED STATES.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MINNESOTA.

FILED MARCH 19, 1900.

(17,676.)

24228

# (17,676.)

## SUPREME COURT OF THE UNITED STATES.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., AUGUST 14, 1900.

1 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the district court of the United States for the district of Minnesota, fourth division, Greeting:

Because in the records and proceedings, as also in the rendition of the judgment of a plea which is in the said district court, before you, at the March term, 1900, thereof, between United States of America, plaintiff, and Northern Pacific Railway Company and Frank M. Fairbank, defendants, a manifest error hath happened, to the great damage of the said defendant, Frank M. Fairbank, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the said record and proceedings aforesaid at the city of Washington, District of Columbia, and filed in the office of the clerk of the Supreme Court of the United States on or before the 11th day of April, A. D. 1900, to the end that, the record and proceedings aforesaid being inspected, the Supreme Court of the United States may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 12th day of March, A. D. 1900.

Issued at office, in Minneapolis, Minnesota, with the seal of the circuit court of the United States for the district of Minnesota, fourth division.

[Seal U. S. Circuit Court, Dist. of Minnesota, Fourth Division.]

HENRY D. LANG,
*Clerk of the Circuit Court of the United States of America for the District of Minnesota.*

Allowed by—
WM. LOCHREN, *Judge.*

UNITED STATES OF AMERICA, *District of Minnesota, Fourth Division,* } *ss:*

In obedience to the command of the within writ I herewith transmit to the Supreme Court of the United States a duly certified transcript of the record and proceedings in the within-entitled cause, with all things concerning the same.

In witness whereof I hereto subscribe my name and affix the seal of the district court of the United States for the district of Minnesota, fourth division.

Seal U.S. Dist. Court, Dist. of Minnesota, Fourth Division.

CHARLES L. SPENCER,
*Clerk of the District Court of the United States of America for District of Minnesota.*

[Endorsed:] Original. United States district court, district of Minnesota, fourth division. United States of America *vs.* Northern Pacific Railway Company and Frank M. Fairbank. Writ of error. Filed 12 o'clock m. March 12th, 1900. Charles L. Spencer, clerk.

2 UNITED STATES OF AMERICA, *ss:*

To the United States of America, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to writ of error filed in the clerk's office of the district court of the United States for the district of Minnesota, fourth division, wherein Frank M. Fairbank is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in said writ mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Dated March 12, 1900.

WM. LOCHREN,
*District Judge.*

Due service of the above citation is hereby admitted this 12th day of March, 1900.

ROBERT G. EVANS,
*United States District Attorney.*

[Endorsed:] Original. United States district court, district of Minnesota, fourth division. United States of America *vs.* Northern Pacific Railway Company and Frank M. Fairbank. Citation. Filed March 12th, 1900. Charles L. Spencer, clerk U. S. district court, district of Minnesota.

3 *Pleas before the Honorable William Lochren, Judge of the District Court of the United States for the District of Minnesota.*

District Court of the United States, District of Minnesota, Fourth Division.

THE UNITED STATES OF AMERICA, Plaintiff,
*against*
THE NORTHERN PACIFIC RAILWAY COMPANY and FRANK M. Fairbank, Defendants.

Be it remembered that at the stated March term, A. D. 1900, of said court, begun and held at the city of Minneapolis, in said dis-

trict, in the fourth division thereof, on, to wit, the 6th day of March, A. D. 1900, the grand jury of the United States of America within and for said district and division, on, to wit, the 6th day of March, A. D. 1900, of said term, came into open court and presented their certain bill of indictment against the Northern Pacific Railway Company and F. M. Fairbank, which was filed of record in said court and is in the words and figures following, to wit:

District Court of the United States of America for the District of Minnesota, Fourth Division.

At a stated term of the district court of the United States of America for the district of Minnesota, fourth division, begun and held at the city of Minneapolis, within and for the district and division aforesaid, on the first Tuesday in March, being the
4 sixth day of March, in the year of our Lord one thousand nine hundred, by a duly empanelled, charged, and sworn grand jury of the United States of America within and for said district and division, it is presented in manner and form following—that is to say:

DISTRICT OF MINNESOTA, *ss*:

The grand jury of the United States of America within and for said district and division on their oath present that during all the times herein mentioned the Northern Pacific Railway Company was and now is a corporation duly organized and existing under and by virtue of the laws of the State of Wisconsin and a common carrier, having its principal place of business in the city of Saint Paul, in the county of Ramsey, in the State and district of Minnesota, and that during all the times herein mentioned said corporation and common carrier was and now is engaged in the transportation of property and merchandise by railroad from the city of Minneapolis, in the county of Hennepin, in the State and district of Minnesota, to the city of Duluth, in said State and district of Minnesota, and that during all the times herein mentioned the said Northern Pacific Railway Company, a corporation and common carrier, as aforesaid, was and now is engaged in the transportation of property and merchandise by railroad and steam vessels in connection with other common carriers, which other common carriers are hereinafter more fully described, by a continuous carriage or shipment from said city of Minneapolis by the way of said city of Duluth to that certain foreign port, to wit, the city of Liverpool, in the Kingdom of Great Britain.

That during all the times herein mentioned the Western Transit Company was and now is a corporation and common carrier engaged in the transportation of property and merchandise by steam vessels from the city of Duluth, in the State and district of Minnesota, to the city of Buffalo, in the State of New York, and that during all the times herein mentioned the New York Central and Hudson River Railroad Company was and now is a corporation and common carrier and engaged in the transportation of property and

merchandise from the city of Buffalo, in the State of New
5 York, to the city of Albany, in the State of New York, and that during all the times herein mentioned the Boston & Albany Railroad Company was a corporation and common carrier and engaged in the transportation of property and merchandise by rail from the city of Albany, in the State of New York, to the city of Boston, in the State of Massachusetts, and that during all the times herein mentioned the Leyland steamship line was and is a corporation and common carrier and engaged in the transportation of property and merchandise by steam vessels from the city of Boston, in the State of Massachusetts, to foreign ports, and especially to the port of Liverpool, in the Kingdom of Great Britain.

That during all the times herein mentioned one F. M. Fairbank was and now is the duly appointed, qualified, and acting agent and shipping clerk of the said Northern Pacific Railway Company, a corporation, as aforesaid, at the city of Minneapolis, in the county of Hennepin, in the State and district of Minnesota, and that the said F. M. Fairbank was also during all the times herein mentioned the duly appointed, qualified, and acting agent of the corporations and common carriers hereinbefore described and of each of them at said city of Minneapolis, county and State aforesaid, and that the said F. M. Fairbank, as the agent and shipping clerk of the said Northern Pacific Railway Company, was duly authorized by said Northern Pacific Railway Company to accept and receive property and merchandise at said city of Minneapolis for continuous carriage and transportation by the said Northern Pacific Railway Company, in connection with the corporations and common carriers hereinbefore described, from said city of Minneapolis, in the State and district aforesaid, to the said port of Liverpool, in the Kingdom of Great Britain, and that the said F. M. Fairbank during all the times herein mentioned was duly authorized and empowered by the said Northern Pacific Railway Company, a corporation, as aforesaid, and each of the companies, corporations, and common carriers hereinbefore described to make, issue, and sign as the agent of the Northern Pacific Railway Company and each of said companies export bills of lading in receipt for property and merchandise so received by the said Northern Pacific Railway Company at the city of Minneapolis aforesaid for carriage and continuous transportation from said
6 city of Minneapolis to said city of Liverpool, in the Kingdom of Great Britain, by said corporation, to wit, the Northern Pacific Railway Company, in connection with other common carriers, as aforesaid.

And the grand jurors aforesaid upon their oaths aforesaid do further present that on the 28th day of February, A. D. 1900, at the city of Minneapolis, in the county of Hennepin, in the State and district of Minnesota, the said Northern Pacific Railway Company, a corporation and common carrier, as aforesaid, and each of the corporations and common carriers hereinbefore described and the said F. M. Fairbank, as the agent of the said Northern Pacific Railway Company, did accept, take, and receive into their possession, custody, and control at the through freight rate of thirty-five cents per hundred-

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weight for continuous shipment and carriage by the said Northern Pacific Railway Company, a corporation, as aforesaid, in connection with the common carriers and corporations hereinbefore described, from said city of Minneapolis, in the county and State aforesaid, to a foreign port, to wit, the city of Liverpool, in the Kingdom of Great Britain, a large quantity of wheat in bulk, to wit, fifty thousand pounds, from the Monarch Elevator Company, a corporation duly organized and existing under and by virtue of the laws of the State of West Virginia, and which said Monarch Elevator Company, a corporation, as aforesaid, was then and there engaged in the elevator business, to wit, the buying, selling, storing, and shipping grain, and particularly wheat.

And the grand jurors aforesaid upon their oaths aforesaid do further present that on the 28th day of February, A. D. 1900, at the city of Minneapolis, in the county of Hennepin, in the State and district of Minnesota, and within the jurisdiction of this court, the said Northern Pacific Railway Company, a corporation, as aforesaid, and the said F. M. Fairbank, the agent of said company, as aforesaid, did wilfully, unlawfully, and wrongfully make, issue, and sign, and cause to be made, issued, signed, and delivered to the said Monarch Elevator Company, a corporation, as aforesaid, a certain bill of lading and receipt (other than charter-party) for the said fifty thousand pounds of wheat in bulk received by the said Northern Pacific Railway Company and the said F. M. Fairbank, as aforesaid, for con-
7 tinuous carriage and exportation by the said Northern Pacific Railway Company in connection with the other corporations and common carriers hereinbefore described, as aforesaid, for the said Monarch Elevator Company, from said city of Minneapolis, in the State and district of Minnesota, to a foreign place, to wit, the city of Liverpool, in the Kingdom of Great Britain; which said bill of lading and receipt made, signed, issued, and delivered, as aforesaid, was then and there in the words and figures following, to wit:

(Here follows bill of lading marked p. 7.)

8 And which said bill of lading and receipt described, made, issued, signed, and delivered, as aforesaid, was not then and there duly stamped with an adhesive internal-revenue stamp for denoting the revenue tax imposed by law thereon, and which said bill of lading and receipt described, made, issued, signed, and delivered, as aforesaid, did not then and there bear and have thereon an adhesive stamp to denote the internal-revenue tax imposed and chargeable thereon, as required by an act of Congress entitled "An act to provide ways and means to meet war expenditures and for other purposes," approved June 13th, 1898.

And the grand jurors aforesaid on their oaths aforesaid do say that the said Northern Pacific Railway Company, a corporation and common carrier, as aforesaid, at the time and place aforesaid, to wit, on the said 28th day of February, A. D. 1900, at said city of Minneapolis, was duly authorized and empowered by said corporations and common carriers hereinbefore described and each of them to make,

issue, sign, and deliver the said bill of lading and receipt to the said Monarch Elevator Company aforesaid and in the manner aforesaid.

And the grand jurors aforesaid upon their oaths aforesaid do further present that said bill of lading and receipt described, as aforesaid, and made, issued, signed, and delivered to the said Monarch Elevator Company, a corporation, as aforesaid, was not then and there a contract or agreement for the charter of any ship, vessel, or steamer, and was not then and there a letter, memorandum, or writing between the master, captain, or owner, or any person acting as agent of any ship, vessel, or steamer, and any other person or persons for or relating to the charter of any ship, vessel, or steamer, or any renewal or transfer thereof, which is against the peace and dignity of the United States and contrary to the form of the statutes in such case made and provided.

MILTON D. PURDY,
*Assistant United States Attorney*
*for the District of Minnesota.*

(Endorsed:) Indictment. A true bill. George R. Chipman, foreman of the grand jury. Names of the witnesses examined be-
9 fore the grand jury: John B. Baird. Milton D. Purdy, ass't United States district attorney. Filed March 6th, 1900. Charles L. Spencer, clerk.

And thereafter and on, to wit, the 7th day of March, A. D. 1900, the following proceedings were had, which were duly recorded in said court in the words and figures following, to wit:

United States District Court, District of Minnesota, Fourth Division.

Term Minutes, March Term, A. D. 1900.

MARCH 7TH, A. D. 1900—Wednesday morning.

Court opened pursuant to adjournment.
Present: Honorable William Lochren, judge.

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| THE UNITED STATES *vs.* THE NORTHERN PACIFIC RAILWAY Company and Frank M. Fairbank. | Indictment under Secs. 7 and 25 of Act of June 13th, 1898. |

And now the defendants in the above-entitled action appear at the bar of this court by Charles W. Bunn, Esq., their attorney, and also the said Frank M. Fairbank in his own proper person, and they are arraigned upon an indictment presented and filed against them at the present term of this court charging that on the 28th day of February, A. D. 1900, at the city of Minneapolis, in the county of Hennepin, in the State and district of Minnesota, they did then and there wilfully, unlawfully, and wrongfully make, issue, and sign a certain bill of lading for certain merchandise, to be exported from the said Minneapolis to a foreign port, which said bill of lading did

not then and there have an adhesive stamp thereon to denote the internal-revenue tax imposed thereon as required by law; and the said Frank M. Fairbank doth declare his true name to be Frank M. Fairbank; and the reading of said indictment having been expressly waived by the said attorney for the said defendants, for a plea to said indictment each defendant doth say that he is not guilty as charged therein.

Whereupon Milton D. Purdy, Esq., assistant United States attorney for the district of Minnesota, appears on behalf of the plaintiff and moves the cause for trial; and a jury, having been called, comes as follows, to wit, Daniel Kennedy, R. O. Hall, Magnus Norman, Charles Boe, Michael Kennedy, John Mullen, Willis Smith, Fred Lassow, R. E. Whitmore, P. W. Jesperson, A. N. Benson, S. P. Thorson, being twelve free and lawful men who are duly empanelled as a jury and sworn to try the issues joined herein.

Mr. Purdy opens the case on the part of the plaintiff.

John B. Baird is sworn and examined as a witness on behalf of the plaintiff.

And here the plaintiff rests its case.

No testimony is offered on the part of the defendant-, and the testimony is closed.

Counsel for each of the respective parties hereto waive the summing up of the case to the jury.

The jury is charged by the court, and retires, under the charge of an officer duly sworn to keep them, to consider of their verdict.

And thereafter the said jury is returned into open court, and, in the presence of the said defendant-, do render their verdict, wherein by their foreman they do say that they "do find the defendants, The Northern Pacific Railway Company and Frank M. Fairbank, guilty as charged in the indictment."

And thereupon the said defendants are asked by the court whether they have anything to say why judgment should not now be rendered and sentence pronounced in accordance with the verdict aforesaid, but neither they nor any one for them say anything in arrest thereof; whereupon, in accordance with said verdict, it is by the court considered and adjudged that each of said defendants is guilty of the crime aforesaid, and that as punishment therefor each of said defendants do pay a fine of twenty-five dollars ($25.00).

And thereafter and on the same day, to wit, the 7th day of March, A. D. 1900, the following paper was filed of record in said court; which said paper is in the words and figures following, to wit:

11 United States District Court, District of Minnesota, Fourth Division.

THE UNITED STATES OF AMERICA, Plaintiff,
*against*
THE NORTHERN PACIFIC RAILWAY COMPANY and Frank M. Fairbank, Defendants. } Verdict.

We, the jury in the above-entitled action, do find the defendants, The Northern Pacific Railway Company and Frank M. Fairbank, guilty as charged in the indictment.

JOHN E. MULLEN, *Foreman.*

(Endorsed:) Verdict. Filed March 7th, 1900. Charles L. Spencer, clerk.

And thereafter and on the same day, to wit, the 7th day of March, A. D. 1900, the following paper was filed of record in said court; which said paper is in the words and figures following, to wit:

District Court of the United States for the District of Minnesota, Fourth Division.

UNITED STATES OF AMERICA
*vs.*
NORTHERN PACIFIC RAILWAY COMPANY and F. M. FAIRBANK.

On the trial of this cause before the undersigned and a jury the following proceedings, among others, were had: After the impanelling of the jury and before any evidence had been offered the defendants and each of them objected to the introduction of any testimony under the indictment on the ground that the act of Congress of June 13, 1898, commonly called the war-revenue law, is void in so far as it imposes a stamp tax on foreign bills of lading upon the ground that to that extent it is in conflict with that provision
12 of article one, section nine, of the Constitution of the United States which provides "No tax or duty shall be laid on articles exported from any State."

The court overruled the objection, and the defendants and each of them then and there duly excepted, and such exception was allowed.

After the testimony was in and before the jury retired the defendants and each of them requested the court to charge the jury that the said jury must acquit the defendants and each of them on the ground that the act of Congress of June 13, 1898, commonly called the war-revenue law, is void in so far as it imposes a stamp tax on foreign bills of lading upon the ground that to that extent it is in conflict with that provision of article one, section nine, of the Constitution of the United States which provides "No tax or duty shall be laid on articles exported from any State."

The court overruled such requests, and the defendants and each of them then and there duly excepted to the ruling; which exceptions were allowed by the court.

Because the foregoing matters do not appear of record, the court, on the trial of this cause and on this day, has signed and sealed this bill of exceptions, and hereby makes the same a part of the record.

Dated March 7, 1900.

WM. LOCHREN, *Judge.*

(Endorsed:) Bill of exceptions. Filed March 7th, 1900. Charles L. Spencer, clerk.

And thereafter and on, to wit, the 12th day of March, A. D. 1900, the following paper was filed of record in said court; which said paper is in the words and figures following, to wit:

District Court of the United States for the District of Minnesota, Fourth Division.

UNITED STATES OF AMERICA )
*v.*
NORTHERN PACIFIC RAILWAY COMPANY and F. M. FAIRBANK. )

*Assignment of Errors.*

Now comes Frank M. Fairbank and assigns the following
13 errors in the judgment of this court in the above-entitled action:

1. The court erred in overruling this defendant's objection to the introduction of any testimony under the indictment for the reason that the act of Congress of June 13, 1898, commonly called the war-revenue law, is void in so far as it imposes a stamp tax on foreign bills of lading, to that extent being in conflict with that provision of article 1, section 9, of the Constitution of the United States which says, "No tax or duty shall be laid on articles exported from any State."

2. The court erred in refusing, after all the testimony was in and before the jury had retired, to charge the jury to acquit this defendant for the reason that the act of Congress of June 13, 1898, commonly called the war-revenue law, is void in so far as it imposes a stamp tax on foreign bills of lading, to that extent being in conflict with that provision of article 1, section 9, of the Constitution of the United States which says, "No tax or duty shall be laid on articles exported from any State."

Dated March 10, 1900.

C. W. BUNN,
*Attorney for Frank M. Fairbank.*

(Endorsed:) Assignment of errors. Filed March 12th, 1900. Charles L. Spencer, clerk.

And thereafter and on the same day, to wit, the 12th day of March, A. D. 1900, the following paper was filed of record in said court; which said paper is in the words and figures following, to wit:

District Court of the United States for the District of Minnesota, Fourth Division.

UNITED STATES OF AMERICA
*v.*
NORTHERN PACIFIC RAILWAY COMPANY and F. M. FAIRBANK.

*Petition for Writ of Error.*

Now comes Frank M. Fairbank, one of the defendants, and alleges that in the above-entitled cause the court in its decision
14 and judgment has committed a manifest error against the said Frank M. Fairbank, as will more fully appear upon the records of all the proceedings in said cause, and the undersigned prays a writ of error to the Supreme Court of the United States in accordance with law.

Dated March 10, 1900.

C. W. BUNN,
*Attorney for Frank M. Fairbank.*

Writ of error allowed.
WM. LOCHREN,
*District Judge.*

M'ch 12, 1900.

(Endorsed:) Petition for writ of error and allowance of said writ. Filed March 12th, 1900. Charles L. Spencer, clerk.

15 District Court of the United States, District of Minnesota, Fourth Division.

I, Charles L. Spencer, clerk of said district court, do hereby certify and return to the honorable the justices of the Supreme Court of the United States that the foregoing, consisting of fourteen (14) pages, numbered from 1 to 14, inclusive, is a true and complete transcript of the records, process, pleadings, orders, final judgment, and all other proceedings in said case entitled The United States of America, plaintiff, against The Northern Pacific Railway Company and Frank M. Fairbank, defendants, and of the whole thereof, as appears from the original records and files of said court; and I do further certify and return that I have annexed to said transcript and included within said paging the original citation, with admission by the United States attorney for said district of service thereof.

Seal U. S. Dist. Court, Dist. of Minnesota, Fourth Division.

In witness whereof I have hereunto set my official signature as the clerk aforesaid and the seal of said district court, at the city of Minneapolis, in the fourth division of the district of Minnesota, this 14th day of March, A. D. 1900.

CHARLES L. SPENCER,
*Clerk of the District Court of the United States for the District of Minnesota.*

[10-cent U. S. internal-revenue stamp, canceled M'ch 14, 1900. C. L. S.]

[Endorsed:] United States district court, district of Minnesota, fourth division. The United States of America against Northern Pacific Railway Company and Frank M. Fairbank. Return to Supreme Court of United States on writ of error.

Endorsed on cover: File No., 17,676. Minnesota D. C. U. S Term No., 226. Frank M. Fairbank, plaintiff in error, *vs.* The United States. Filed March 19th, 1900.

No. 226.

OCT 1 1900

JAMES H. McKENNEY, Clerk

Brf. of Bunn for P. E. (on mo.)

# In the Supreme Court of the United States.

OCTOBER TERM, 1900.

Filed Oct. 1, 1900.

No. 226.

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FRANK M. FAIRBANK,
Plaintiff in Error,

vs.

THE UNITED STATES.

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MOTION TO ADVANCE.

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C. W. BUNN,
Counsel for Plaintiff in Error.

24237

# In the Supreme Court of the United States.

OCTOBER TERM, 1900.

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No. 226.

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FRANK M. FAIRBANK,
Plaintiff in Error,

vs.

THE UNITED STATES.

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## MOTION TO ADVANCE.

Plaintiff in error (with the Northern Pacific Railway Company) was indicted, tried and convicted in the district court of the United States for the district of Minnesota, of the charge of issuing, as agent of the railway company, an export bill of lading upon certain wheat exported through the port of Boston, Massachusetts, without affixing thereto an internal revenue stamp, as required by the war revenue act of June 13, 1898. In proper time and manner plaintiff in error objected at the